



**Michigan Supreme Court
State Court Administrative Office**

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John D. Ferry, Jr., State Court Administrator

Memorandum

DATE: October 17, 2003

TO: All Judges
cc: Court Administrators, Magistrates, Court Clerks

FROM: John Ferry, State Court Administrator

RE: State Court Administrative Memorandum 2003-10
Surety Bond Process

The process of issuing, releasing, or forfeiting surety bonds is governed by various court rules and statutes. This memo is provided in order to outline the elements of the process to assist courts with administrative procedures.

A. Pre-trial Release

1. *Procedure:*

- a. Court states reasons on the record that the defendant's appearance or protection of the public cannot be assured with a personal recognizance bond or by money bail with or without conditions.
- b. If the court finds conditions outlined in MCL 765.6 or 765.6a cannot be met by defendant, 10% bond shall not be set.
- c. Defendant and surety sign SCAO approved form MC-241, Bond.

2. *Note(s):*

- a. MCR 6.106(E)(1)(a) provides that the court may require a defendant to post a bond executed by a surety approved by the court, by the defendant, or by another who is not a licensed surety.
- b. MCL 765.6a provides that before granting bail, a court shall require a cash bond or surety other than the applicant if the applicant is either charged with a crime alleged to have occurred while on bail pursuant to

a bond personally executed by him or her; or has been convicted of a felony twice within the preceding five years.

B. Conditions of Bond

1. *Procedure:*

- a. Notate all conditions of release on the bond prior to defendant, third party, or surety's signature on MC-241, Bond form.
- b. If conditional bond is entered for the protection of named persons, the court forwards a copy of MC-241, Bond, to law enforcement for entry into LEIN.

2. *Notes:*

- a. MCR 6.106(D) provides that if the court determines that the release of a defendant on personal recognizance bond will not reasonably ensure the appearance of the defendant or will not reasonably ensure the safety of the public, the court may order conditional bond.
- b. *Kondzer v Wayne County Sheriff*, 219 Mich App 632 (1996), held that a surety is only bound by those terms and conditions to which they agree or consent for the release of a defendant. A violation of conditional bond may result in forfeiture or revocation of a surety bond; however this may only be imposed on a surety if they agreed or consented to the imposition of the protective condition.
- c. *People v Brow*, 253 Mich 140 (1931), held that a surety's obligation to guarantee a defendant's presence in court terminates upon sentencing unless the surety consents to the bond being continued.

C. Termination of Release Order and Notice to Surety

1. *Procedure:*

- a. Upon finding that a defendant has failed to comply with conditions of release, the court may issue a warrant, SCAO approved form MC-229, Petition and Bench Warrant.
- b. Upon issuing the bench warrant, prepare SCAO form MC-218, Order Revoking Release and Forfeiting Bond, Notice of Intent to Enter Judgment, sign and mail it to the defendant, the surety agent, anyone who posted bond, and the prosecutor.
- c. Prosecuting Attorney, an attorney for the local municipality, or attorney general prepares SCAO form MC-230, Motion and Order to Show Cause and files it with the court.

- d. After MC-230 Motion and Order to Show Cause are filed, the court shall give each surety immediate notice, not to exceed seven days after the date of the failure to appear.

2. Notes:

- a. MCL 600.8511 does not confer the authority to sign an Order Revoking Release and Forfeiting Bond to a district court magistrate.
- b. MCR 6.106 (I)(2) provides that a defendant's failure to comply with conditional release may result in revocation of the release order and forfeiture of bond.
- c. There is a conflict regarding the procedural requirements for service of the Motion and Order to Show Cause upon a surety. MCR 3.604(I)(2) provides that the notice may be mailed to the address stated in the bond or when the security was furnished, unless there has been a notice of change of address, or in any manner prescribed in MCR 2.107. MCL 765.28 provides that notice shall be served upon each surety in person or left at the surety's last known business address. When there is a conflict between statute and court rule and the conflict is procedural in nature, court rule governs. Therefore, the procedure for service upon sureties may be found in MCR 3.604(I)(2).

D. Opportunity to Appear, Entry of Judgment

1. Procedure:

- a. Hold show cause hearing. If good cause is shown, judgment against the surety or sureties may be entered for such amounts the court may see fit, not exceeding the full amount of the bond.
- b. Prepare, sign, and mail SCAO form MC-238, Judgment after Bond Forfeiture to defendant and surety agent.
- c. If bond or bail is forfeited, the court shall enter an order directing the disposition of the cash, check or security within 45 days of the order. The treasurer or clerk, upon receipt of a certified copy of the order, shall dispose of the cash, check, or security pursuant to the order.
- d. Prosecuting Attorney, attorney general, or an attorney for the local municipality may proceed with civil collection procedures.

2. Notes:

- a. MCL 600.8511 does not confer the authority for a district court magistrate to hold a show cause hearing on a forfeiture procedure.
- b. MCR 3.604 provides that in an action where a bond or other security has been posted, judgment may be entered directly against the surety or security on motion without the need of an independent action showing liability on the bond or forfeiture of the security.
- c. MCR 6.106(I)(2) provides that if the defendant does not appear and surrender to the court within 28 days after revocation date or does not, within that period, satisfy the court that compliance to bond conditions has occurred, the court may continue the revocation order and enter judgment for the state or local unit of government against the defendant and anyone who posted bond for the entire amount of the bond and costs of the court proceedings.
- d. MCL 765.15(1) provides the procedure for disposition of bond or bail upon forfeiture.
- e. MCL 765.28 provides that up to the full amount of the bond may be forfeited and a judgment entered by the court.
- f. MCR 6.106(I)(2) provides that if a prosecuting attorney, attorney general or an attorney for the local municipality does not wish to be involved with any forfeiture action, the court still may schedule a show cause hearing, send notice to the prosecuting official, and proceed.

E. Remission of Penalty

1. Procedure:

- a. Defendant or attorney files Motion for Reinstatement of Bond.
- b. Hearing scheduled with proper notice to prosecutor or an attorney for the local municipality.
- c. Motion may not be granted without payment of the costs and expenses incurred in the proceedings for the collection of the penalty.
- d. If the person who forfeited bond or bail is apprehended, the ends of justice have not been thwarted, and the county has been repaid its costs for apprehending the person within one year from the time of the forfeiture judgment, the court shall set aside the forfeiture and discharge.

- e. If bond or bail is discharged, the court must enter an order with a statement of the amount to be returned to the depositor.

2. Notes:

- a. MCR 3.604(I)(3) provides that if the court determines, in later proceedings or upon appeal, that the surety is not liable or the security should not have been forfeited, restitution of the money paid or security forfeited may be ordered to be paid back to the surety agent or person who posted bond.
- b. MCR 3.605(D) provides that, with proper notice to the prosecutor or an attorney for the local municipality, an application for the remission of a penalty, including a bond forfeiture, may be made to the judge who imposed the penalty or ordered the forfeiture.
- c. MCL 600.4835 provides that, upon good cause shown, the circuit court may remit any penalty, or any part thereof, upon such terms as appear just and equitable to the court to the county treasurer (MCL 600.4841). The statute does not authorize the court to remit any fine imposed by any court upon conviction for any criminal offense, nor any fine for actual contempt of court, or for failure to comply with the court's orders or process.
- d. MCL 765.15 provides the procedure to be followed if bond or bail is forfeited, the defendant is apprehended within one year from the time of the forfeiture judgment, and the forfeiture order is set aside.

F. Deposit of Forfeited Bond

1. Procedure:

- a. If bond or bail is forfeited, an order must enter directing disposition of it within 45 days of the order. Upon presentation of a certified copy of the order to the treasurer or clerk, the bond or bail must be disposed of pursuant to the terms of said order.
- b. If the court does not order an assignment of the bond, it must order the breach prosecuted by the attorney general or the prosecuting attorney for the county in which the bond was taken under MCR 3.604. The penalty recovered is to be paid into the treasury of the county in which the bond was taken, to the credit of the general fund.

2. Notes:

- a. MCR 3.606 provides that the penalty of the bond for contempt outside the immediate presence of the court shall be credited to the general fund of the treasury of the county in which the bond was taken.
- b. MCL 765.15(1) provides for the procedure to follow after a bond or bail is forfeited.
- c. MCL 780.905(4) provides that any assessments imposed upon a defendant where the bond or bail has been forfeited, shall be collected from any cash deposit personally given by defendant.